

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1562
MAR 11 1977

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK, N.Y.

UNITED STATES OF AMERICA,

:

: Civil Action No.

vs

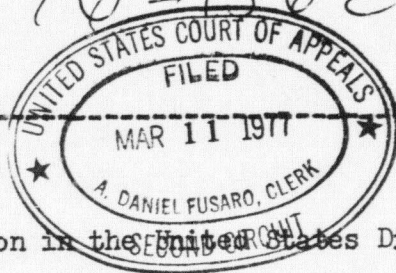
:

PRASARN BHONGSUPATANA

:

Appellant.

:



Appeal from Judgement of Conviction in the United States District
Court for the Eastern District of New York - Set Below
The Honorable Jack B. Weinstein U.S.D.J. and a Jury.

and Appendix
BRIEF FOR APPELLANT

^

PRASARN BHONGSUPATANA

Pro-se Appellant.

PAGINATION AS IN ORIGINAL COPY

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POINT TO BE RAISED

Point No. 1

- 1- Ineffective Assistance of Assigned Counsel at trial and upon direct appeal so creating a denial of Appellant Constitutional Rights, Namely, the Sixth Amendment.

Point No. 2

- 2- No copies of the attorney files nor the Court papers(transcripts) made available to Appellant to use in preparation of direct appeal, even though requested by him, when the Chief Judge notified Appellant he is to proceed pro-se Constitutional a Denial of Due Process of Law and Equal protection of the Law as based upon the United States Constitution.

STATEMENT OF CASE

Appellant appeared before the United States Federal District Court on Nov. 12, 1976, and the Court, Namely the Eastern District of New York, finding said Appellant to be a non-affluent, indigent, from another country, appointed an assigned counsel, to represent him in Court, as it is duty bound in accordance with the laws of the United States, based upon the Constitution of the United States.

Appellant thereafter met his assigned Counsel Mr. John C. Corbett, Esq. who assured said Appellant he had handled numerous narcotics cases and handle the case;s to the best of his ability and would establish Appellant innocence.

Prior to trial Mr. Corbett contacted Appellant at M.C.C. three times, for ten or fifteen minutes at most.

Trial lasted less than two days and no proper pre-trial motions were entered in my behalf to the best of my belief and knowledge. Appellant requested certain witness be subpoenaed to prove my innocence, namely, the particular men in Bangkok, Thailand that shipped these items to the United States. However, Appellant was denied this by the attorney's refusal to submit the proper ex-parte application.

Upon being found guilty and sentenced Mr. Corbett stated " Don't worry I will beat your case upon appeal and you will be allowed to leave this country a free man!!

On January 18, 1977 Mr. John C. Corbett sent a letter to me and the Second Circuit Court of Appeals stating that he had studied the trial transcript and find no error was made by the District Court during trial, and so invoked Anders California stating to the Court of Appeals that there are No Non - Frivolous issues which can be presented in Appellant behalf(see Exhibit)

POINT NO. 1

-6-

Ineffective Assistance of Assigned Counsel, at trial and upon direct Appeal so creating a denial of Appellant Constitutional Rights, Namely, the Sixth Amendment.

Point 1.

Appellant states the United States Constitutional guarantee of assistance of Counsel at all stages, pre-trial, trial, and post trial through Appeal for Cert. to the United States Supreme Court.

The Sixth amendment guarantees that a Criminal defendant shall enjoy the right " to have assistance of Counsel for his defence " this guarantee was first interpreted by the Supreme Court to mean the effective assistance of Counsel in POWELL V. ALABAMA 287 U.S. 45, 53 S.Ct. 55, 77L. Ed 158 (1932)

Justice Sutherland, the author of POWELL

Decision, went beyond a formal requirement that Counsel be appointed, holding, that the trial Judges failure " to make an effective appointment of Counsel " had resulted in the denial of effective and substantial aid, Defendants were not afforded the right to Counsel in any substantial sense. And in.

AVERY V. ALABAMA 308 U.S. 444, 446 60 S.Ct. 321, 322, 84 L.Ed. 377(1940) Justice Black stated " the Constitutional guarantee of Assistance of Counsel cannot be satisfied by mere formal appointment and in

GLASSER V. U.S. 315 U.S. 60, 62 S.Ct. 457, 86 L. Ed. 680 (1942) the Court enforced the implication of AVERY that an inadequate performance by Counsel would render a conviction void and

Recently in Mc MANN V. RICHARDSON 397U.S. 759, 90 S.Ct. 1441, 25L.ED2d 763(1970) the Supreme Court stated " it has long been recognized that the Right to Counsel is the Right to the effective assistance of Counsel ."

In United States ex-rel Maselli V. REINCKI 383 F2d 129(Second Circuit 1967) the Court said that in order to assume Constitutional proportions " A LACK of effective assistance of Counsel must be of such a kind as to shock the conscience of the Court and make the proceedings a force and mockery of Justice. "

However, the Third Circuit stated in MOORE V. U.S. 422 F2d 730 (3rd. Cir. 1970) so establishing a standard of " normal competency "

" Whether an indigent is represented by an individual or by an institution. HE IS ENTITLED TO LEGAL SERVICES OF THE SAME LEVEL OF COMPETENCY AS THAT GENERALLY AFFORDED BY THE BAR TO FEE PAYING CLIENTS," and U.S. exrel MC COY V. RUNDEL 419 F2d 118, 120 (3rd. Cir. 1970) in concurring opinion stated in both cases, therefore the standard of adequacy of legal services is the exercise of the customary skill and knowledge which normally prevails at the time and place.

Adequate/effective assistance of Counsel cannot be proved by Appellant at this time except in the following manner with the Assistance of Court, as records speak louder than words, or rather " lack of valed records " due to assigned counsel's lack of interest in the instant matter, except to assist the DEA/Department of Justice.

Appellant realizes that the normal burden of proving this charge is upon Appellant, however, the Criminal Docket nor transcript of proceedings is not available to said Appellant and this will prove that a learned Attorney who handled numerous narcotics cases among which was the case and the JORGE DABED* SUMAR case, the defendant was co-operating with the government and has reimburse the Attorney on the side. The actual attorney of record was HENRY CHAPMAN. However, on November 18, 1974 John C. Corbett Esq. was substituted in that case.

John C. Corbett as attorney of record refused to Honor this Appellant's request for witnesses, and without these witnesses the Appellant could not prove that he had no knowledge of the contents of ~~the~~ the items in question and that he was only doing someone a favor. The Rights to confrontation and to obtain witness in ones behalf is one of the basic rights of this country and in CHAMBERS V. MISSISSIPPI 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973) the Supreme Court held that a denial of the right to call and Cross-Examine Witness was a constitutional violation and the denial of a fair trial. The Supreme Court stated " Few rights are more fundamental than that of an accused to present witnesses in his own defense E.g. WEBB V. TEXAS 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972); WASHINGTON V. TEXAS 388 U.S. 14, 19, 87 S.Ct. (1920), 18 L.Ed2d., 1019 (1967)

Appellant had seen assigned counsel on three occasions while at M.C.C. in New York City for a period of ten minutes each time and then displayed a complete lack of interest, stating the defendant had nothing to worry about and refused to discuss the subject of obtaining the Witnesses from Thailand, for his defence, stating he was not being paid enough money to handle the case in that manner.

The fees that are paid assigned Counsels is regulated by the Criminal Justice Act and the Department of Justice, however, there has been exceptions made see U.S. V. TUTINO 419F. Supp 246 in which assigned Counsels requested fees ranging from \$8,500 to \$11,185, and the court settled with them, after stating " As a trial Judge for 36 years we feel qualified somewhat to make such an estimation. And also stated in U.S. V. SCHIEFFMAN DKT #75 Cr. 506(SD.N.Y., March 4, 1976)(J. WEINFELD) " As the trial judge, this Court has a complete awareness of the services required to be rendered properly to protect the defendants interests.

Appellant brings to the Courts attention to the decision in COLLINS V. U.S. 418F Supp 577(1976) in which Judge PLATT U.S.D.J. ordered a hearing pertaining to ineffective Assistance of Counsel, Namely, John C. Cerbett, Esq. who had misinformed COLLINS on date of sentencing in that instant case. Apparently this attorney is either an extension of the DEA/U.S. Attorneys Office or very lacksdaisical in his work.

John C. Corbett used *Anders v. California* 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed2d 493 (1967) in this case the Court stated " The Constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curial his role as advocate requires that he support his clients appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsels brief should be furnished the indigent and time allowed him to raise any points that he choose; the Court not counsel then proceeds, after a full examination of all the proceedings to decide whether the case is wholly frivolous. If it so finds it may grant counsels request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on the merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of Counsel to argue the appeal.

8a

Appellant states the aforementioned decision was used by Assigned Counsel in an attempt to foreclose any right to appeal and it should be noted that the decision refers to an indigent for as long as a person retains funds he that he can afford to pay an attorney for his time, said attorney will proceed in Court in some way.

Other Circuits as well have held that the failure by defense Counsel to pursue an appeal, when requested to do so, amounts to frustration of the right to appeal and ineffective Assistance of Counsel which requires the granting of relieve see e.g. KENT V. U.S. 423F2d,1050(5th. Cir. 1970); CARTWRIGHT V. U.S. 410F2d 122(6th. Cir. 1969); JENKINS V. U.S. 320 U.S. App. D.C. 248,399F2d981(1968)

John C. Corbett was/is the Chief Editor of the Brooklyn Published by the Brooklyn Bar Association, assisted numerous clients throughout the years yet refused to assist Appellant in a proper manner with the basics, guaranteed him by the U.S. Constitution and at a later date submitted a letter to Appellant and the Court informing him that any appeal would be for nought in his opinion after reading the entire court transcript, he stated it contained no merit and so under Anders California he was notifying the Court of his position. A silent record as to pre-trial motions and request for witnesses establish Appellant claims.

It is for the aforementioned reasons that this court should reverse the conviction based upon Constitutional Rights being violated and remand for a new trial, or dismiss, if the witnesses cannot be located at this late date.

POINT NO. 2

-10- No copies of the attorney files, nor the Court papers (transcripts) are made available to Appellant to use in preparation of Direct Appeal, even though requested by him. The Chief Judge notified Appellant he is to proceed pro-se this Constitutional a Denial of Due Process of Law and Equal Protection of the Laws as based upon the United States Constitution.

Appellant states he is foreclose from the basic tools to prepare an adequate appeal and cannot afford the basic's, Namely, copies of all Dockets, transcripts, motions, and files as he is an indigent and whatever was afforded by the Court is retained by Assigned Counsel who refused to extend himself in Appellant behalf and therefore was removed as attorney of record and therefore Appellant was informed to proceed pro-se:

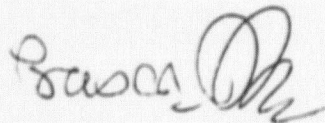
In BRITT V. No. CAROLINA 92 S.Ct. 431, 404 U.S. 226, 30 L.Ed.2d 400 the court stated, " A States Must, as a matter of equal protection provide indigent prisoners with basic tools of adequate defense on appeal, when those tools are available for a price to other prisoners. "

Appellant, if he were affluent and could afford what other inmates can, and have been allowed, first prior to trial Appellant would here an attorney who would be financially reimbursed for his time and afford would have made a diligent effort to win, by preparing proper pre-trial motions. Hired an investigator to travel to Thailand, and check on Appellant story, thereafter attempting to have Appellant witnesses subpoenaed to court in Appellant behalf, or in the least produce depositions. Supply copies of all motions to Appellant and obtain daily copy of all court proceedings and as the case developed as it did said Appellant could pay for all files (public records) transcripts etc. purchase the proper law books to research which is not available to Appellant in the law library here at this institution, he could make arrangement to obtain a court order to be allowed a typewriter and tape recorder in his cell to be able to do law work and would not have to work in Federal Prison Industries for 28 cents. per hour in order to survive and with this extra time he would be able to research his case properly, however, Appellant cannot even obtain an extension of time to file a brief and has no copy of any court proceedings to date. Appellant prays that this Honorable Court will consider the merits of all issues raised under the guidelines established by the United

States Supreme Court under HAINES V. KERNER * U.S. - and so grant him relief the present situation.

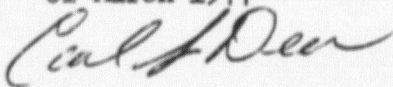
C O N C L U S I O N

Appellant appear before this Honorable Court Pro-se, and prays that they will consider the Constitution issues poorly raised by this litigent and thereafter reverse the conviction and remand for a new trial with orders for the government to produce the witnesses benefiaal for Appellant defense and grant him an investigator and attorney who will prepare a proper defense. (A Silent Record says nothing.)



Respectfully Submitted

Sworn to and subscribed
before me this 7th., Day
of March 1977



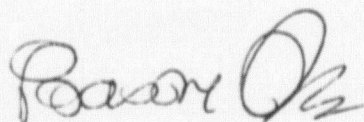
C E R T I F I C A T E O F S E R V I C E

I PRASARN BHONGSUPATANA Appellant appearing before the Court Pro-se states I have this 7th., Day of March 1977, cause the aforementioned to be fallwared via U.S. mail to the following.

Original and two copies to Court of Appeals.

Copy to U.S. Attorney Office for Eastern District.

Copy to Clerk of Court of Appeals for Second Circuit.



Respectfully Submitted

REAL

AL DOCKET - U.S. District Court

76CR 640

JUDGE/MAGISTRATE Assigned U.S.

0715

207

1

Disp./Sentence

PRASARAN BHONGSUPATANA

(LAST, FIRST, MIDDLE)

Case Filed
Mo Day

10 7

76

640

1

U.S. MAG. CASE NO. 76 M 2062

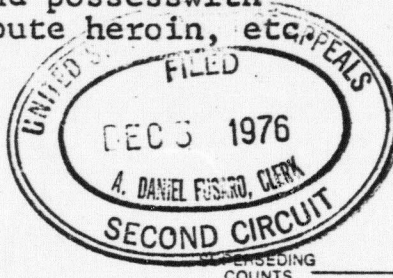
U.S. TITLE/SECTION

21:952(a)960(a)(1);
841(a)(1) &
18:2

OFFENSES CHARGED

Did import and possess with
intent to distribute heroin, etc.

2



U.S. MAG. CASE NO. 76 M 2062

DATE RELEASE

☐ Denied ☐ AMT ☐ Fugitive
☐ Set ☐ Pers. Recog
☐ PSA
\$200,000
Date 10/2/76
☒ Surety Bond
☐ Bail Not Made
☐ Status Changed (See Docket)
☐ 10% Deposit
☐ Collateral
☐ 3rd Ptry Cust
☐ Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	High Risk Date	10/14/76	Trial Set For	Disposition of Charges
Summons Served	Information 10-7-76	1st Plea	10/26/76	11/2/76
First Appearance 10-2-76	Indict. Waived	Final Plea	10/28/76	<input checked="" type="checkbox"/> Convicted <input type="checkbox"/> Acquitted <input type="checkbox"/> Dismissed
	In Charging District			<input type="checkbox"/> On All Charges <input type="checkbox"/> On Lesser * Offense(s) <input type="checkbox"/> WOP: <input type="checkbox"/> WP <input type="checkbox"/> On Government Motion

MAGISTRATE		OUTCOME:
Search Warrant Issued	DATE 10-2-76	<input type="checkbox"/> DISMISSED
Summons Issued	INITIAL/NO. ASC/07E	<input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued	INITIAL APPEARANCE DATE 10-12-76	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
COMPLAINT	PRELIMINARY EXAMINATION OR REMOVAL HEARING	
OFFENSE (In Complaint)	Importation of large quantities of heroin. T-21 USC Section 952(a) 963.	

U.S. Attorney or Asst.

Clayman...
Carol Amon

ATTORNEYS

John Corbett, Esq.
66 Court Street
Brooklyn, New York

Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
10/12/76		Deft. indicted on 10/1/76 - See 76 CR 640.	
10-7-76		Before CATOGGIO, J - Indictment filed	
10/14/76		Before WEINSTEIN, J. - Case called. Deft & Counsel present. Deft arraigned and enters a plea of not guilty. Pre-Trial conference held and concluded. Bail of 200,000.00 continued. Interpreter sworn. Defts motion for reduction of trial set for 10/26/76 at 9:30 a.m.	
10-26-76		Voucher of Compensation for Expert Services - Filed.	
10-26-76		Before Weinstein, J.- Case Called. Deft & Counsel Present. Trial ordered & Begun. Jurors were selected and sworn. Vinita Buivan sworn as interpreter. Trial continued to 10-27-76.	
10-27-76		Copy of Letter dated 10-21-76 received from Chambers to Mr. Cobett from Mr. Carol Amon - Filed. And Report of Investigation - Filed.	
10-27-76		Before Weinstein, J.- Case Called. Deft. & Counsel Present. Trial resumed. Deft's motion to dismiss the indictment is denied. Trial continued to 10-28-76 at 10:00 A.M.	

FORM AC-256

FORM AC-256

United States of America vs.

M'FILED

M'FILED

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

PRASARN BHONGSUPATANA

DOCKET NO.

76 CR 640

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO: 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH

DAY

YEAR

11

12

1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

John Corbett, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in counts one and two.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C., Section 952(a) and Section 960(a)(1); T-21, U.S.C., Section 841(a)(1) and T-18, U.S.C., Section 2 in that on or about September 6, 1976, the defendant did knowingly and intentionally import into the United States from Bangkok, Thailand approximately 6.1 kilograms of heroin hydrochloride, a Schedule I narcotic drug controlled substance and did knowingly and intentionally possess with intent to distribute a quantity of such said drug.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

ten (10) years imprisonment on each of counts one (1) and two (2), plus a five (5) year special parole term to run concurrently and fined \$10,000.00 on each of counts one (1) and two (2) to run concurrently for a total fine of \$10,000.00.

SPECIAL
CONDITIONS
OF
PROBATION

FILED
IN CLERK'S OFFICE
J. S. DISTRICT COURT E.D. N.Y.

★ NOV 12 1976 ★

TIME A.M. _____
P.M. _____

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

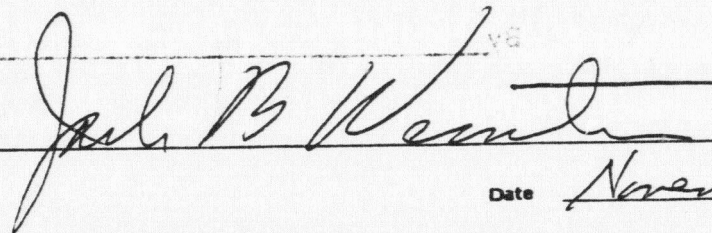
The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

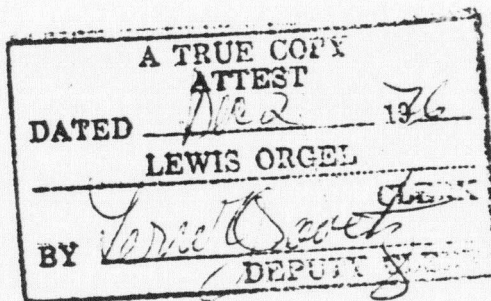


Date

November 13, 1976

9.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY
(DOCUMENT NO.)	Interval Section II (a)	Start Date End Date (b)	Ltr. Code (c) Total Days (d)
10/28/76	Before WEINSTEIN, J.- Case called. Deft & Counsel presen. Trial resumed. Both sides rest. Defts motion for a judgment of acquittal is denied. Court charges jury. Alternate jurors discharged. Jury returns and enters a verdict of guilty on counts 1 and 2. Jury discharged. Trial concluded. Sentence set down for 11/12/76 at 10:30 a.m.		
10/28/76	By WEINSTEIN, J. - Order of sustenance filed.		
11-11-76	By Larry F. Taylor - Letter received from M.C.C. giving a brief summary of their observation during stay. - filed.		
11-12-76	Before WEINSTEIN J - case called - deft & atty John Corbett Corbett present - Benita Buivan sworn as interpreter - deft sentenced to 10 years imprisonment on each of counts 1 and 2 plus speicl parole term of 5 years to run conc. and fine \$10,000.00 on each of counts 1 and 2 to run conc. for a tptal fine of \$10,000.		
11-12-76	Judgment & commitment filed - certified copies to Marshal		
11-16-76	Certified Copy of Judgment and Commitment returned and filed from Marshal. Deft. delivered to M.C.C. on 10-4-76.		
11-17-76	Notice of Appeal filed without fee.		
11-17-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.		
11-18-76	Voucher for expert services filed		
11-22-76	Voucher for compensation of atty John Corbett filed		
12/2/76	Govts request to charge filed. (Exhibit one (1)).		
12/2/76	Draft of Courts Charge (Exhibit two (2)) filed.		
12/2/76	Draft of Courts Charge (Exhibit two (2)) filed.		
12/2/76	Record on Appeal certified and mailed to the C of A.		



B